

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Telecommunications Carriers Eligible to)	
Receive Universal Service Support)	WC Docket No. 09-197
)	
Petition of NTCH, Inc. for Forbearance)	
Pursuant to 47 U.S.C. § 160(c) from)	
47 U.S.C. § 214(e)(5) and 47 C.F.R.)	
§ 54.207)	

COMMENTS OF

**CALAVERAS TELEPHONE COMPANY (U 1001 C)
CAL-ORE TELEPHONE CO. (U 1006 C)
DUCOR TELEPHONE COMPANY (U 1007 C)
FORESTHILL TELEPHONE CO. (U 1009 C)
HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)
HORNITOS TELEPHONE COMPANY (U 1011 C)
KERMAN TELEPHONE CO. (U 1012 C)
PINNACLES TELEPHONE CO. (U 1013 C)
THE PONDEROSA TELEPHONE CO. (U 1014 C)
SIERRA TELEPHONE COMPANY, INC. (U 1016 C)
THE SISKIYOU TELEPHONE COMPANY (U 1017)
VOLCANO TELEPHONE COMPANY (U 1019 C)
WINTERHAVEN TELEPHONE COMPANY (U 1021 C)
("CALIFORNIA RURAL ILECS")**

ON

PETITION FOR FORBEARANCE OF NTCH, INC.

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I. INTRODUCTION.

In response to Public Notice DA 11-1140, released on June 29, 2011, Calaveras Telephone Company (U 1001 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C) (the "California Rural ILECs") hereby offer these comments on the Petition for Forbearance ("Petition") of NTCH, Inc. ("NTCH") submitted on June 20, 2011 in WC Docket No. 09-197. The California Rural ILECs are rural, rate-of-return regulated telephone companies serving rural and remote areas of California. Many of the California Rural ILECs have significant numbers of Lifeline customers and Lifeline-eligible customers, so the impact of Lifeline-only ETC designations in California's rural service territories can have significant consequences for these small carriers.

NTCH seeks forbearance from the requirement in 47 U.S.C. Section 214(e)(5) and 47 C.F.R. Section 54.207 that a prospective Eligible Telecommunications Carrier ("ETC") must serve the entirety of each rural telephone company service territory in which it seeks ETC designation. Forbearance from this requirement is not in the public interest, as it would strip the state commissions of the ability to consider the localized competitive and consumer impacts of Lifeline ETC designation where the applicant does not serve the entirety of the rural telephone company area in which it is proposing to receive federal subsidies. Prospective wireless ETCs generally serve the more populous, lower-cost areas in towns and along highways in rural service territories, but they do not serve the high-cost, remote areas of those same territories. If rural

telephone companies lose significant numbers of Lifeline customers in their more populous areas, this can threaten their ability to effectively serve the entirety of their service areas. Even setting aside issues of "creamskimming," state commissions should be permitted to consider whether these impacts are reasonable, and one important consideration should be whether the competitor is positioned to serve the entire service area if the rural telephone company is no longer able to do so.

NTCH's claim that compliance with the "service area" requirement is "impossible" for facilities-based wireless providers should be given no weight, as NTCH is free to seek a redefinition of the applicable rural service territories pursuant to existing law. Rather than granting this forbearance request, the Federal Communications Commission ("FCC") should continue to endorse the service area redefinition process under 47 C.F.R. Section 54.207. Any discussions regarding the necessity for the "service area" requirement should be directed to the open rulemaking in WC Docket No. 10-90. In that docket, the Commission can examine the ETC "service area" requirement in the context of reforms to the ETC process as a whole rather than on a piecemeal basis through forbearance requests.

The California Rural ILECs do not believe that the FCC has ever granted forbearance from the "service area" requirement, and doing so here would effectively void the requirement and the associated service area redefinition process for all prospective "Lifeline only" ETCs.¹ Although NTCH has not sought ETC designation in the California Rural ILEC territories, granting NTCH's forbearance petition would have the effect of removing California's ability to

¹ Since NTCH's request for forbearance does not depend on its specific circumstances, but merely upon NTCH's assertions that the "service area" requirement is unnecessary and overly burdensome, granting forbearance for NTCH in effect would mean that forbearance will be granted to all "Lifeline only" ETCs.

examine the rural "service area" issue in connection with other pending ETC requests that directly impact the California Rural ILECs. If there is even one scenario in one rural exchange where it would be contrary to the public interest to allow an ETC to serve only a portion of the exchange, the service territory redefinition requirement should be retained.

II. NTCH HAS NOT MET THE STANDARD TO JUSTIFY FORBEARANCE FROM THE RURAL SERVICE AREA REQUIREMENT.

In order to meet the statutory standard for forbearance, a petitioner would have to show that enforcement of the regulation in question "is not necessary for the protection of consumers" and that "forbearance is consistent with the public interest." 47 U.S.C. § 160(a)(2), (3). NTCH cannot meet either of these standards. At least in some scenarios involving some rural carriers, the "study area" requirement is an important safeguard in ensuring that rural carriers remain able to serve the most vulnerable, high-cost areas of their service territories. Some of the California Rural ILECs serve between 30% and 50% Lifeline customers. If a competitive ETC receives federal Lifeline funds to serve those customers, the affected rural telephone company may lose significant numbers of customers very quickly, thereby threatening its financial viability, and compromising its ability to serve the entirety of its territory. Where a competitive ETC designation would create the possibility of such an impact, but the prospective ETC refuses to serve the entire rural service territory, it would be reasonable for the state commission to consider whether this outcome is in the public interest in the context of a service territory redefinition request.

The proposed forbearance from the service area requirement raises competitive concerns that the state commissions should be permitted to review in the course of service area redefinition requests. As small, rate-of-return carriers, the California Rural ILECs are not able to modify their prices in response to competitive Lifeline providers. Some Lifeline ETC applicants

are proposing to offer hundreds of free minutes to Lifeline customers without requiring any contribution from customers. *See TAG Mobile, LLC, Advice Letter No. 1* (May 4, 2011) (proposing to offer 275 free minutes to Lifeline customers in connection with ETC request to California Public Utilities Commission). While larger companies such as AT&T and Verizon have the pricing flexibility under their deregulatory framework to swiftly respond to such offerings, the California Rural ILECs face several restrictions that would prevent a competitive response. The California Rural ILECs have tariffs that prescribe their prices, and those prices cannot typically be adjusted outside of the companies' rate cases, which typically take place every four years. If a rural company sought to lower prices to compete with a wireless Lifeline offering, there is no guarantee that the California Public Utilities Commission ("CPUC") would approve such a proposal. Even if it were permitted, reducing prices would necessarily put more pressure on other funding sources for these companies, such as the California state high cost fund, the California High Cost Fund A ("CHCF-A"). For many years, the CPUC required that recipients of CHCF-A funding have basic service rates that were at least at 150% of the basic rates charged by AT&T. Although this requirement has been partially suspended, the CPUC recently raised CHCF-A recipients' rates to \$20.25. Even with a significant Lifeline discount applied to this service rate, it could be difficult for the California Rural ILECs to compete with a free offering from a wireless provider.

The requirement in 47 U.S.C. Section 214(e)(5) that a prospective ETC serve the entirety of a rural service area helps protect consumers in rural areas from the possibility that competition for Lifeline customers in more populous areas would threaten universal service in the more remote areas. Given the regulatory constraints that rural companies face and their small customer bases, there is a real possibility that competition for Lifeline customers in only a part of

their service territories could harm their ability to fulfill their Carrier of Last Resort ("COLR") obligations overall. If a competitive ETC were at least prepared to step into the shoes of the rural telephone company should its financial viability be threatened, no harm would come to consumers from granting the ETC designation. Where a competitive ETC serves only part of a service territory, universal service goals can be threatened, and customers' interests may not be adequately protected. At least in some cases, enforcement of Section 214(e)(5) will be "necessary for the protection of consumers," and the state commissions should continue to be able to assess these considerations. NTCH cannot satisfy the standard in 47 U.S.C. Section 214(e)(2).

The applicable public interest factors also militate against granting NTCH's forbearance request. NTCH focuses on the advantages of its services for Lifeline customers, but the features of NTCH's services do not relate directly to the question at hand, which is whether forbearance from the rural "service area" requirement should be permitted. As discussed above, prospective wireless ETC requests raise a host of competitive issues and universal service concerns for rural telephone companies and the customers that they serve. If a mass migration of Lifeline customers occurs toward wireless providers who do not serve the entirety of rural areas, state universal service funds could be impacted, and COLR responsibilities could be put in jeopardy. And if a prospective wireless ETC is not prepared to serve the entirety of the rural service areas in which it seeks designation, a state commission could very reasonably conclude that this is not in the public interest.

NTCH argues that the study area requirement has no meaning in connection with "Lifeline only" ETC requests because there is no possibility of "creamskimming" by a Lifeline provider. However, state commissions are not limited to an analysis of "creamskimming" in

considering proposed ETC requests that do not cover the entirety of a rural service territory. NTCH's Petition cites to the 1996 Federal-State Joint Board Recommendations, but the cited paragraph merely describes the "creamskimming" issue; it does not foreclose other public interest considerations that a state commission may wish to consider in connection with an ETC request for part of a rural service territory. *See Federal-State Joint Board on Universal Service, Recommended Decision, 12 FCC Rcd 87 (1996) at ¶ 172.* The "study area" requirement remains a statutory requirement for all ETC requests, not just high-cost requests. As discussed above, there are ongoing concerns regarding the competitive and customer impacts of "Lifeline only" requests. State commissions should remain free to consider these issues in reviewing proposals to redefine rural service territories.

III. THE FCC SHOULD NOT PREEMPT THE STATES' ABILITY TO CONSIDER SERVICE TERRITORY REDEFINITION REQUESTS.

If the FCC grants NTCH's forbearance request, the service territory redefinition process will likely cease to exist for all "Lifeline only" ETC applicants. This would constitute an unnecessary and inappropriate intrusion on the states' abilities to review these requests, and to consider all of the competitive, consumer, and universal service funding issues raised by such requests. The redefinition process has been used for many years to accommodate competitive ETCs who may not be able to – or who may not wish to – serve the entirety of rural service areas. That process should not be replaced by a series of forbearance requests in which the FCC decides the issues instead of the states.

NTCH argues that the current process is too burdensome to continue to be enforced, and cites an experience in Colorado in which it claims that business opportunities were lost as a result of the time associated with the service territory redefinition process. The California Rural ILECs cannot speak to the specific facts in Colorado, but it does not appear that state review of

redefinition requests is unduly time-consuming in general. For example, on July 6, 2011, the FCC received a petition to approve a redefinition of a rural service territory in Georgia. *Petition for Approval of Redefinition of the Service Area of Windstream Georgia, LLC in the State of Georgia*, WC Docket No. 09-197 (filed July 6, 2011) ("*Georgia Petition*"). That request was made of the Georgia Public Service Commission in March 2011. *See Georgia Petition*, at p. 3. Four months is not an unreasonable time for state commission consideration of this request and submission to the FCC for approval. Although the time necessary to process redefinition requests will always depend upon the specific facts and the extent to which the ETC applicant provides appropriate data at the outset, the process does not appear to be overly time-consuming given the important issues at stake.

To the extent that inefficiencies exist in the redefinition process, the FCC can address those issues in the course of its open rulemaking to examine universal service issues, WC Docket No. 10-90. The ETC process generally, and the "service area" requirement specifically, are among the topics under consideration in that proceeding. *See In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, FCC 11-13, ¶¶ 88-89. If changes to the system need to be made, that proceeding is the place to address the issues. State commissions should not be stripped of their ability to consider redefinition requests through a forbearance petition brought by a single carrier.

IV. CONCLUSION.

The California Rural ILECs respectfully request that NTCH's Petition be denied, as it does not meet the standard for forbearance under 47 U.S.C. Sections 160(a)(2), (3). This forbearance request is not in the public interest, and could remove an important protection for

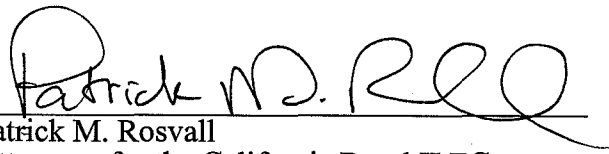
customers in rural areas. Prospective "Lifeline only" ETCs should continue to rely on the service area redefinition process to seek designation in portions of rural service territories that they cannot or choose not to serve. To the extent that problems exist with the redefinition rules or rural service area rules, those problems can be fully noticed and brought before the FCC in the course of the open universal service rulemaking.

Dated this 28th day of July, 2011, at San Francisco, California.

Respectfully submitted,

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